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The cagle Market

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The Eagle Market

FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA,

In and for the County of Ormsby.

Marion W. Buckley, Joseph W. Buckley,

in an action brought against you by the above named Plaintiff, in the District Court of the first Judicial Dis-trict of the State of Nevada, Ormsby County, and answer complaint filed therein within ten days (exclusive of STATE OF NEVADA, the day of service) after the service on you of this Summons is served at said county, or if served out of said County, but within the District, twenty ty days, in all other cases forty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to obtain the judgment and decree of this court ond semi-annual apportionmen t of that the bonds of matrimony here of School Moneys for 1905, on the basis fore and now existing and uniting you of \$6.990202 per census child: and said plaintiff to be forever annuled and dissolved upon the ground that at divers times and places since said marriage you have committed adultry with one Kate Cottrell, and particularly that from about the 9th day of Ju is 1900 to and including, the 13th day o. June, 1960, at the Charing Cross Hotel in the city of London, England, you lived and conabited with said Kate Cottrell.

All of which more fully appears by complaint as filed herein to which tou are hereby referred.

And you are hereby notified that if you fail to answer the Complaint, the said Plaintiff will apply to the Court for the relief herein demanded. GIVEN under my hand and Soul of the

District Court of the First Judicial District of the state of Nevation Ormsby County, this 2d day of December, in the year of our Lord one

IN THE DISTRICT COURT OF THE Notice of Application for Permission the State of Neyada.

SCHOOL APPORTIONMENT.

Carson City, Nevada, July 11, 1905 To the School Officers of Nevada: Following is a statement of the sec

Countres :	CHIIGIER	
Churchill	135 \$	943 68
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kike	1,120	7,829 02
Esmeralda	217	
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SUPREME COURT DECISION. IN THE SUPREME COURT OF THE Guiling, Execturiz, and Charles Guiling, Executor of the Estate of Martin Guiling, december.

Washoe County Bank.

Appellant,

Mesers Goodman and Webb, Dodge and
Parker, Attorneys for Respondent,
Mesers Cheeney and Massey, Attorneys for Appellant.

OPINION
On March 1, 1893, James Pollock, his wife Delia and Daniel Powell, who are admitted to have been the owners at that time, executed to B. U. Steinman and C. H. Cummings as trustees, a trust deed for certain property near Reno to secure the payment of a promisory note of the same date giv-en by the Pollocks and Powell to Farmers and Mechanics Savings Bank of Sacramento for \$8,000 and interest. This deed directed the trustees in case of default in payment, to seil the property at Sacramento after giving notice, to apply the proceeds in satisfaction of the note and costs of sale and to pay any excess to the On August 31, 1895, the Pollocks and Powell executed to Martin Gulling

a mortgage on the same premises for

\$2,082.60, and interest thereon trom

that date at eight per cent per annum,

which is sought to be foreclosed in this action and which specified that it was given subject to the trust deed. On February 23, 1891 the Pollocks and Powell conveyed their interest in the property to Washoe County Bank for a stated consideration of \$14,000.00, which comprised the amount of \$8,-800, estimated to be due to the Farmers and Mechanics Bank of Sacramento on the note secured by the trust deed and \$5,200 due from the Pollocks and Powell to the Washoe County Bank on unsecured notes which were surrendered to them. On February 26, 1897, the Farmers' and Mechanics Savings Bank commenced suit to recover the amount due on its note stated at \$8,639.73, and for a forclosure of the trust deed and sale to satisfy that amount against the Pollocks, Powell, Thomas E. Haydon, Henry Anderson John Doe, Richard Roe, Michael Doe, B. U. Steinman and C. H. Cummings Neither Martin Gulling nor the Washoe County Bank were named as par-ties in the complaint, but both were served with summons under the ficticious designations of defendants who were alleged to have some title, claim or interest which was second and subordinate to the right of the Farmers' and Mechanics Bank arising from the trust deed. On March 8, 1897 Martin Gulling filed an answer in that action in which the name of Washoe County Bank is not mentioned in the title, body or prayer. It stated that its allegations were made "in obedience to summons therein issued and served Notice is hereby given that on the plaint therein." In this answer no 12th day of Sept. 1905, in accordance momitted the priority of the claim of with Section 23, Chapter XLVI, of the the Farmers and Mechanics Sav-Statutes of 1905, one Philip V. Mighels ings Bank, under the trust deed, and Frank L. Wilder of Carson, thereby avoiding any real insue County of Ormsby and State of No. with the plaintiff, but he alleged Action brought in the District Court of the State of Nevada, made application to the State of Nevada, Ormital County and the complaint filed in the said county, in the office of the Clork of said District Court on the 2d day of December, A. D. 1905.

THE STATE OF NEVADA SENDS GREETING TO

JOSEPH W. BUCKLEY,

Defondant.

You are hereby required to appear in an action brought against you by

County of Ormsby and State of Nevada, State of Nevada, in the State of Nevada, in the personal claiming the the principal by the Follocks are rewell, that other personal claiming the principal by the Follocks are rewell, that other personal claiming the personal claiming the principal by the Follocks are rewell, that other personal claiming the morgagors for principal, and steered and headgate and five called feet beyond in the latered to the antistraction of the morgagors for principal, and steered and headgate and five called feet beyond the applied first to the antistraction of the payment of any judgment which Farmers' and Mechanics Bank might obtain, and pipe and there used to morgagors for principal, the morgagors for principal, the morgagors for principal, and steered and steered to the antistraction of the morgagors for principal, the morgagors for principal, and the second in the second in the principal against the morgagors for principal, the morgagors for principal, the morgagors for principal, and the second in the principal against the morgagors for principal, the morgagors for principal, the morgagors for principal, and the second in the persons claiming the persons claiming the persons claiming under them appears to the principal and the persons claiming under them appears to the principal and the persons claiming under them appears to the principal and the principal and the principal and the persons claiming the persons claiming under them appears to the principal and the principal and

the scheduler that might chall, and separate the persons, hough for the second separate that the control of the second se

to the interest of plaintill, thereto to the interest of plaintill, thereto rested. That Martin Guiling offered rested. That Martin Guilence and proof and submitted evidence and proof and thereupon rested and that heary Anderson, Washoe County Bank and "the defindants and each of them, having submitted evidence and proofs in support of the issues made by them in their answers, the case was sub-mitted to the court!" The fair inference from the language and from the fact that he was first to submit proofs is that he introduced evidence to support the allegations of his ans-wer which averred the execution and non-payment of his mortgage, but that he did not offer any in relation to other facts alleged in the answer of Washoe County Bank. The findings and decree in that action disposed of the claims of these other defendants and found and declared that the sale and deed made by the trustees was in accordance with the terms of the trust deed and that by such sale and deed all the interest ... the property was conveyed to Washoe County Bank clear of Gulling's mortgage, and that the latter was entitled to a judgment against the Pollocks and Powell for the amount due on his note but not to a degree of foreclosure. The findings recite that "defendant Gulling was made a party to the action and was duly served with process therein, and in due time filed his answer to not be likely to go to trial without plaintiff's complaint, ' but it does not appear that there was any other service upon him, or issue made that rendered him liable beyond the allegations and demands of the complaint, or that would cut off his right by reason of the sale by the trustees which did not take place until after he had filed his answer. The court tound in both actions that \$8,800.00, estimated to be the amount due the armers' and Mechanics' Bank and notes held by Washoe County ank against the Pollocks and Powe., for \$5,200.00 unsecured after the execution of the mortgage to Gulling, consituted the consideration exp esse., at \$14,000.00 for the deed from mem to Washoe County Bank, and that the property was worth about that sum at the date vice or issue, he ought not to be of the trustees' sale and the time of

the trial. A blank space in the decree in the first action for judgment in the amount owing by the Pollocks and mortgage remains unfilled. The case now before the Court was brought by Martin Gulling on June 9, 1902 against Washoe County Bank as grantee to foreclose his mortgage so executed on the premises by the Pollocks and Powell before they deeded to defendant, and is now prosecuted by the representatives of his estate. The de-fendant pleads by way of estoppel, the judgment in the former action and claims that by it Gulling was, and his executors are barred and foreclosed of all right to proceed against Washoe County Bank. The district court was it did not have jurisdiction to make the judgment effective in quieting the title of appeallant against Gulling,

The important questions under the the rights of the parties be concluded trict court are affirmed. record and elaborate and interesting without service or a waiver thereof. It is said that service of the answer lating to the trustees sale determined the Washoe County Bank will be Norcross, J.

matter which one defendant may alno answer or reply thereto is required conclusion and direction of the court it would still up a dangerous precedent, which we would be rejuctant to the Pollocks and Powell for the dent, which we would be rejuctant to the Pollocks and Powell for establish, to hold that the statute desamount due on his note and morts

he answer of Wa hee County Bank n the former suit not having been and if we concede for the purpose here that denial by statute without any pleading in reply is sufficient benight not to become operative before service. White v. Patton, 87 Cal. 151; lements v. Davis. \ Ind., 631. To ractice, might cause litigents to suffer a great injustice. An answer to a complaint ought to be served upon tue plaintiff but if it is not he mabe expecting it, or to secure a default, he could not obtain judgment without being aware of it, and would being prepared to meet the statutory denial in his behalf of any new matter it alleged. It is different between co-defendants. Usually their interests are not adverse, except to the plaintiff, and one defendant may not ixpect that another defendant will set up a cause of action and seek a judgment against him, and if he does he should not be seguired to watch the court records as Gulling could have done for over four months after his answer was filed to ascertain whether any of his co-defendants filed a crosscomplaint against him, in order that answer was filed, to ascertain whether he might be prepared to meet it. Unpleading and demand or waives ser-

bound by any judgment based upon it. If the Farmers' and Mechanics' Sav. ings Bank instead of the Washoe County Bank had bought the property at the trustees' sale and relied upon Powell to Gulling on his note and its purchase, necessarily it would have pleaded the fact by supplemental complaint, and they would not have been considered denied by "ulling" answer to the original complaint, and without service upon or waiver or service by him, a valid judgment based upon facts occurring after he had been served with the original com-plaint and filed his answer thereto, could not have been taken by default against him. In Mitchess v. Mitchell, 79 P. 50, 28 Nev., we set aside the action of the district court whereby it granted a plaintiff relief not demanded in the complaint served upon of the opinion that in the earlier suit the defendant. That was pursuant to statute, but there is no more reason for holding a defendant hable on a title of appeallant against Gulling, judgment based on a cross-complaint ceeding. The and it has now entered a decree of or pleading of a co-defendant without under the vice foreclosure and sale to satisfy his service, than on one resting on a commortgage, from which this appeal is plaint of a plaintiff which has not determined.

lating to the trustees' sale determined in the former action were within
the issues as between Guiling and
appellant, and if they were not,
whether he waived the framing of
issues so that he became bound by
the decree. The facts stated in the
complaint of Farmers and Mechanics
Savings Bank avering the execution
of the trust deed were not dealed by
any of the parties. The statute at

andant may al-adant and that This is well illustrated by the findin des for a co-defendant facts not alleged against him but stated in the answer of another defendant to the answer of another defendant to the answer of another defendant to the compaint, or that an issue would be favor of Guiling, both would have been mere filing without service of an anser containing new matter alleged against the Pollocks and Poweil for lack of service as is the judgment against the companint of the plaintiff. sale and it has been held that if one of the parties to a judgment is not bound, the other is not. They had been served by the Savings Bank served upon Gulting, and he having been served by the Savings Bank it, which would nave been a waiver of service, we feel constrained to hold that it raised no issue against him, that complaint and to the extent of Ts that complaint and to the extent of The demands they were in court or were bound, but a judgment against the n for the amount or foreclosure of the Gulling note and mortgage, when they had not been served with pleading or process regarding these would have been void. The court has jurisdiction of the subject matter of all questions involved in this litigation, but of the parties no further than they presented themselves or were served with plea Iings or process or waived service or issues. If a complaint and summons on a demand for one thousand dollars is served upon a defendant, a judgment for ten thousand would be void, because the district court would have jurisdiction over him to the extent of only one thousand, while as far as subject matter is concerned, it has jurisdiction in any amount.

> The facts were quite different and the principal involved distinguishable n Maples v. Geller, 1 Nev., 236. mand judgment upon new matter was filed to the complaint but not served. The question was not between co-defendants. The court said that the filing of the answer gave it jurisdiction over the defendant. Stripped of dicta that decision propertly determined that the filing of an answer to the complaint without service prevents a judgment for the plaintiff by default. While here we hold that property rights cannot be lost or adjudicated upon an answer or pleading by a defendant seeking affirmative re lief on new facts against a co-defendant without service or an issue or waiver.

Questions are presented upon the record in this case whether or not, under the provisions of the practice act of this State, the answers filed by Martin Gulling and the Washoe County Bank in the suit instituted by the Farmers' and Mechanics' Savings Bank, in so far as they sought affirmative relief against co-defendants, are answers as contemplated by our statute, or whether they are in fact equitable cross-bills. If the latter, whether or not, under the practice act, they are permissible pleadings, and further, if permissible pleadings, whether or not the dismissal of the plaintiff's complaint would not require the dismissal of the entire proceeding. These questions, however, under the view we have taken of this: case are not deemed necessary to be

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